



State Water Resources Control Board

October 9, 2023

Mr. Ernest Conant
Regional Director
U.S. Bureau of Reclamation
econant@usbr.gov

COMPLIANCE WITH D-1641 SAN JOAQUIN RIVER OCTOBER FLOW REQUIREMENTS

Dear Mr. Conant,

This letter is in regard to compliance with the October flow requirements for the San Joaquin River at Airport Way Bridge, near Vernalis (Vernalis flow requirements) identified in State Water Resources Control Board (State Water Board or Board) Water Right Decision 1641 (D-1641). As you are aware, the State Water Board assigned responsibility for achieving the October Vernalis flow requirements to the United States Bureau of Reclamation (Reclamation) in D-1641 as conditions of water right permits for operation of New Melones Reservoir on the Stanislaus River, a tributary to the San Joaquin River. Reclamation did not comply with October Vernalis flow and associated reporting requirements in calendar years 2021 and 2022. The State Water Board expects that Reclamation will comply with the October Vernalis flow requirements in 2023 in accordance with its water right permits for operation of New Melones Reservoir, particularly given the abundant precipitation in 2023 and associated elevated storage.

D-1641 October Flow Requirements for San Joaquin River

The San Joaquin River October minimum monthly average flow requirement includes a base flow of 1,000 cubic feet per second (cfs), plus an additional pulse flow up to a maximum of 28,000 acre-feet, or the volume needed to achieve a monthly average flow of 2,000 cfs when incidental flow at Vernalis is higher than the required base flow. The additional pulse flow is not required in a critical year following a critical year. The 7-day running average flow is also required to be no less than 20 percent below the minimum monthly average flow requirement (D-1641 Table 3, Footnotes 12 and 15; pages 184 and 186). October flows are included in D-1641 to support fish and wildlife beneficial uses and specifically to attract adult fall-run Chinook salmon returning to spawn. In addition, D-1641 Condition 11d (at page 149), requires Reclamation to provide immediate written notification to the State Water Board's Executive Director if a compliance issue is anticipated to potentially occur or is known to have occurred.

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

Compliance with San Joaquin River October Flow Requirements

In October of 2021 and 2022, San Joaquin River flows near Vernalis were lower than D-1641 requirements resulting in a cumulative deficit of 48,355 acre-feet of river flows that were required but not provided for the intended purpose of attracting and supporting adult fall-run Chinook salmon returning to spawn. In October of 2021, the flow requirement was 1,456 cfs¹ as a minimum monthly average flow and 1,165 cfs as a 7-day running average. Flow gage data show that monthly average flows observed on the San Joaquin River near Vernalis in October 2021 were 808 cfs, 648 cfs below the monthly requirement, with a total flow deficit for the month of 39,828 acre-feet. Additionally, flows at Vernalis were below the 7-day running average requirement of 1,165 cfs for 24 days.

In October of 2022, the additional pulse flows were not required because 2022 was a critical year following another critical year. The San Joaquin River flow requirement near Vernalis was 1,000 cfs as a minimum monthly average and 800 cfs as a 7-day running average. Flow gage data show that monthly average flows on the San Joaquin River near Vernalis in October 2022 were 861 cfs, 139 cfs below the monthly requirement, with a total flow deficit for the month of 8,527 acre-feet. San Joaquin River flows near Vernalis were below the 7-day running average requirement of 800 cfs for 19 days. The State Water Board Executive Director was not notified of anticipated or observed compliance issues in 2021 or 2022, as required by D-1641.

Obligations to Meet San Joaquin River October Flow Requirements

Reclamation has previously taken the position that it is not obligated to meet D-1641 San Joaquin River flow requirements, and may take the position that it would not have been reasonable to meet October flow requirements in 2021 and 2022 given dry hydrology and water supply delivery obligations. However, D-1641 does not provide an exception to Reclamation's obligation to meet San Joaquin River flow requirements during October. D-1641 includes provisions that allowed other water right holders to contribute to the October pulse flows consistent with the San Joaquin River Agreement (SJRA), which has since expired, but D-1641 does not establish shared responsibility to achieve the October flow requirement or alleviate Reclamation's responsibility for meeting this requirement, particularly for the base flow of 1,000 cfs (monthly average), 7-day average flow of 800 cfs, and associated notification requirements, none of which were achieved in 2021 and 2022.

D-1641 San Joaquin River flow and notification requirements have repeatedly not been met in recent non-drought as well as drought years. These minimum flow requirements are intended, in part, to create improved conditions for fall-run Chinook salmon populations that are currently in poor condition. The continued decline or loss of San

¹ The 28,000 acre-foot pulse flow is equal to an additional 456 cfs/day in October. (28,000 acre-feet / 31 days) / (1.98 acre-feet/cfs) = 456 cfs / day. The base flow plus the pulse flow is 1,000 cfs + 456 cfs = 1,456 cfs as a monthly average for October (31 days).

Joaquin River fall-run Chinook salmon threatens the resilience of the remaining Central Valley populations, which are also in decline.

The State water Board updated the February through June Lower San Joaquin River flow objectives to improve protection of fish and wildlife beneficial uses with adoption of the 2018 amendments to the water quality control plan for the San Francisco Bay/Sacramento-San Joaquin Delta (Bay-Delta Plan). The State Water Board did not update the October flow objectives for the San Joaquin River at Vernalis. Accordingly, those objectives remain in effect for the foreseeable future. The responsibility for achieving those objectives may change in the future, but at present it remains the responsibility of Reclamation to meet the October Vernalis flow requirements as a condition of its water right permits to operate New Melones Reservoir.

Reclamation is encouraged to participate in the Board's efforts to update responsibilities for implementing the Lower San Joaquin River flow objectives if it believes that its responsibility for meeting the October flow objective should be modified. Until the implementation process is complete, the D-1641 Lower San Joaquin River flow requirements remain in effect. If Reclamation is unable to meet its water right obligations for operation of New Melones Reservoir, it must notify the State Water Board and may choose to pursue a petition to modify those obligations if all required findings and other criteria are met. Failure to address compliance issues through appropriate processes may subject Reclamation to enforcement action.

If you have any questions or would like to discuss this matter further, please contact Diane Riddle at diane.riddle@waterboards.ca.gov.

Sincerely,



Eileen Sobeck